



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

September 14, 2021

Via electronic mail

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Via electronic mail

Ms. Mallory A. Milluzzi
Partner/Attorney
Klein, Thorpe and Jenkins, Ltd
20 North Wacker Drive, Suite 1660
Chicago, Illinois 60606
mamilluzzi@ktjlaw.com

RE: FOIA Request for Review – 2020 PAC 62833; N007633-040920

Dear [REDACTED] and Ms. Milluzzi:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2020)). For the reasons that follow, the Public Access Bureau concludes that the response by the Village of Orland Park (Village) to the first four parts of [REDACTED] April 9, 2020, FOIA request did not violate FOIA, but the Village improperly withheld records responsive to part five.

On that date, [REDACTED] submitted a FOIA request to the Village asking:

[1] Please provide the criteria used to determine if an employee of the Village of Orland Park was being allowed to work from home due to the Covid19 pandemic. [2] Please provide a list of each and every employee of the Village who was approved to work from home and the reason they were approved to work from home. [3] Please provide a list of all the employees [sic] who were

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required to come to work at the Village offices and the reason they were required to work from the Village Office. [4] Please provide the information on ██████████ and how she can do her job as administrative assistant to the Mayor and how she can answer calls to the Mayors [sic] Office when she is working from home. [5] Please provide the list of employees who have remote computer access to the Villages [sic] Systems and networks to perform their Jobs remotely[.]^[1]

On May 4, 2020, the Village responded, denying part five of ██████████ request pursuant to sections 7(1)(u) and 7(1)(v) of FOIA (5 ILCS 140/7(1)(u), (1)(v) (West 2020)). Additionally, the Village informed ██████████ that it located no records responsive to parts two and three of his FOIA request. The Village further asserted that parts one and four of the request did not fall within the scope of FOIA, as they posed questions rather than reasonably describing any public records. Later that afternoon, ██████████ submitted the above-referenced Request for Review disputing the Village's response to his FOIA request.

On May 8, 2020, this office sent a copy of the Request for Review to the Village and asked it to provide unredacted copies of any and all records that were withheld for this office's confidential review, together with a detailed explanation of the legal and factual bases for the applicability of the section 7(1)(u) and 7(1)(v) of FOIA. This office also asked the Village to provide a detailed written explanation for its responses to parts one and four of ██████████ FOIA request. Specifically, this office asked the Village to explain whether it possesses any records pertaining to the criteria used to determine if a Village employee could work from home due to the COVID-19 pandemic. On May 19, 2020, counsel for the Village submitted the requested materials and additionally asserted the applicability of section 7(1)(kk) of FOIA (5 ILCS 140/7(1)(kk) (West 2020)). The Village provided a complete version of its written answer for this office's confidential review and a redacted version for forwarding to ██████████. See 5 ILCS 140/9.5(d) (West 2020). On May 20, 2020, this office forwarded the redacted copy of the Village's response to ██████████; he did not submit a written reply.

DETERMINATION

Parts One through Four of the FOIA Request

Section 1.2 of FOIA (5 ILCS 140/1.2 (West 2020)) provides that "[a]ll records in the custody or possession of a public body are presumed to be open to inspection or copying."

¹FOIA Request submitted by ██████████ to the Village of Orland Park FOIA Center (April 9, 2020).

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However, "[a] request to inspect or copy must reasonably identify a public record[.]" *Chicago Tribune Co. v. Department of Financial and Professional Regulation*, 2014 IL App (4th) 130427, ¶33, 8 N.E.3d 11, 19 (2014). A FOIA request "reasonably describes records if 'the agency is able to determine precisely what records are being requested.'" *Kowalczyk v. Department of Justice*, 73 F.3d 386, 388 (D.C. Cir. 1996) (quoting *Yeager v. Drug Enforcement Admin.*, 678 F.2d 315, 326 (D.C. Cir. 1982)). Public bodies are not required to search beyond the four corners of a FOIA request, nor are they required to divine the requester's intent. *Manna v. U.S. Dep't of Justice*, 106 F. Supp. 3d 16, 19 (D.D.C. 2015). Further, a public body is not required to answer questions or generate new records in response to a FOIA request. *Kenyon v. Garrels*, 184 Ill. App. 3d 28, 32 (4th Dist. 1989)

In its response to this office, the Village argued that asking for the "criteria" for working from home "is not a request for records" subject to FOIA.² If the Village possessed a document laying out the requirements or factors involved in deciding who was eligible to work from home, asking for the "criteria" was sufficient to identify such a record. The Village's attorney advised, however, that "the Village * * * confirmed that it did not have a document laying out the criteria for staying or working from home."³ The Village provided information supporting its assertion on a confidential basis. This office has not received information suggesting that the Village did possess a record listing the criteria.

The Village next argued that part four of the request improperly "asks the Village to provide general information about [REDACTED] employment and to explain * * * how she does her job."⁴ This office agrees that part four of [REDACTED] request did not reasonably identify public records but instead sought an explanation, which the Village was not required to provide under FOIA.

As to parts two and three of the request, the Village argued that asking "the reason why" employees were approved to work from home or required to come to work "is clearly asking the Village to interpret or advise requesters as to the meaning or significance of the public records, which is not allowed or required under FOIA."⁵ See 5 ILCS 140/3.3 (West 2020) (FOIA

²Letter from Mallory A. Milluzzi, Assistant Village Attorney, Klein, Thorpe, and Jenkins, Ltd., to Christina Lucente-McCullough, Public Access Bureau, Office of the Attorney General (May 19, 2020), at [2].

³Letter from Mallory A. Milluzzi, Assistant Village Attorney, Klein, Thorpe, and Jenkins, Ltd., to Christina Lucente-McCullough, Public Access Bureau, Office of the Attorney General (May 19, 2020), at [2].

⁴Letter from Mallory A. Milluzzi, Assistant Village Attorney, Klein, Thorpe, and Jenkins, Ltd., to Christina Lucente-McCullough, Public Access Bureau, Office of the Attorney General (May 19, 2020), at [2].

⁵Letter from Mallory A. Milluzzi, Assistant Village Attorney, Klein, Thorpe, and Jenkins, Ltd., to Christina Lucente-McCullough, Public Access Bureau, Office of the Attorney General (May 19, 2020), at [2].

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"is not intended to compel public bodies to interpret or advise requesters as to the meaning or significance of the public records."). Regardless, the Village asserted, it possessed no lists responsive to those two parts of the request, nor did it have a record indicating the reasons why each employee was working remotely or not. This office has not received information indicating that the Village did possess lists responsive to parts two and three of ██████████ request naming each employee and the rationales for their ability to work remotely. Under the circumstances of this matter, this office concludes that the Village's response to the first four parts of ██████████ request did not violate FOIA.

Part Five of FOIA Request

Under FOIA, a public body "has the burden of proving by clear and convincing evidence" that information it withholds is exempt from disclosure. 5 ILCS 140/1.2 (West 2020). In its confidential response to this office, the Village argued that the record responsive to part five of ██████████ request is exempt under sections 7(1)(u), 7(1)(v), and 7(1)(kk) of FOIA because disclosing a list of employees who have remote access to the Village's computer network could result in a security breach.

Section 7(1)(u) of FOIA

Section 7(1)(u) of FOIA exempts from disclosure "[i]nformation that would disclose or might lead to the disclosure of secret or confidential information, codes, algorithms, programs, or private keys intended to be used to create **electronic or digital signatures** under the Electronic Commerce Security Act." (Emphasis added.) Section 5-105 of the Electronic Commerce Security Act (5 ILCS 175/5-105 (West 2020)) defined an "electronic signature" as "a signature in electronic form attached to or logically associated with an electronic record."⁶ The same section defines a "digital signature" as:

[A] type of electronic signature created by transforming an electronic record using a message digest function and encrypting the resulting transformation with an asymmetric cryptosystem using the signer's private key such that any person having the initial untransformed electronic record, the encrypted transformation, and the signer's corresponding public key can accurately determine whether the transformation was created using the private key that corresponds to the signer's public key and whether the initial electronic record has been altered since the

⁶The Electronic Commerce Security Act has since been repealed and replaced by the Uniform Electronic Transactions Act (815 ILCS 333/1 *et seq.* (West 2020), added by Public Act 102-038, effective June 25, 2021).

transformation was made. A digital signature is a security procedure.

The Village did not articulate how the language of the section 7(1)(u) exemption, which is narrow and highly technical in nature, could apply to the basic information at issue in the responsive record. Therefore, the Village improperly withheld the employee list pursuant to section 7(1)(u) of FOIA.

Section 7(1)(v) of FOIA

Section 7(1)(v) of FOIA exempts from disclosure:

Vulnerability assessments, security measures, and response policies or plans that are designed to identify, prevent, or respond to potential attacks upon a community's population or systems, facilities, or installations, the destruction or contamination of which would constitute a clear and present danger to the health or safety of the community, but only to the extent that disclosure could reasonably be expected to jeopardize the effectiveness of the measures or the safety of the personnel who implement them or the public. Information exempt under this item may include such things as details pertaining to the mobilization or deployment of personnel or equipment, to the operation of communication systems or protocols, or to tactical operations.

By its plain language, section 7(1)(v) applies to "[v]ulnerability assessments, security measures, and response policies or plans * * * the destruction or contamination of which would constitute a clear and present danger to the health or safety of the community[.]" The responsive record is not a vulnerability assessment or response policy or plan, and it does not discuss or reflect security measures designed to deal with potential attacks. Thus, the document simply is not among the types of homeland security records that fall within the plain language of the section 7(1)(v) exemption.

Section 7(1)(kk) of FOIA

Section 7(1)(kk) of FOIA permits a public body to withhold "[t]he public body's credit card numbers, debit card numbers, bank account numbers, Federal Employer Identification Number, security code numbers, passwords, and **similar account information**, the disclosure of which could result in identity theft or impression or defrauding of a governmental entity or a person." (Emphasis added.)

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In construing statutes such as FOIA, the primary goal is to ascertain and effectuate the intent of the General Assembly. *See Southern Illinoisan v. Illinois Dep't of Public Health*, 218 Ill. 2d 390, 415 (2006). "[W]hen a statute lists several classes of persons or things but provides that the list is not exhaustive, the class of unarticulated persons or things will be interpreted as those 'others such like' the named persons or things." *Board of Trustees of Southern Illinois Univ. v. Illinois Dep't of Human Rights*, 159 Ill. 2d 206, 211 (1994). In other words, the listed terms are examples of what the General Assembly intended the statute to cover. *See Duffy v. Illinois Dep't of Human Rights*, 354 Ill. App. 3d 236, 239 (4th Dist. 2004).

In analyzing the language of section 7(1)(kk), this office has determined that the exemption concerns "types of account information that could be exploited to gain unauthorized access to accounts." Ill. Att'y Gen. PAC Req. Rev. Ltr. 64908 66410, issued January 28, 2021, at 2. In that matter, this office explained that such account access information "is not akin to basic identifying information," such as the names and badge numbers of police officers. Ill. Att'y Gen. PAC Req. Rev. Ltr. 64908, at 2.

This office's review of the withheld information confirmed that it is not "similar account information" to credit card numbers, bank account numbers, passwords, and the like. Therefore, the Village improperly withheld the employee list pursuant to section 7(1)(kk) of FOIA.

In accordance with the conclusions expressed in this letter, this office requests that the Village provide [REDACTED] with a copy of the record responsive to part five of his request.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at clucentemccullough@atg.state.il.us or the Chicago address listed on the first page of this letter.

Very truly yours,

[REDACTED]
CHRISTINA M. LUCENTE-MCCULLOUGH
Assistant Attorney General
Public Access Bureau

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cc: *Via electronic mail*
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